STATE OF MICHIGAN

IN THE SUPREME COURT

APPEAL FROM THE MICHIGAN COURT OF APPEALS
Hon. Helene N. White, Presiding Judge

PHYLLIS L. GRIFFITH, Legal Guardian for DOUGLAS W. GRIFFITH, a Legally Incapacitated Adult,

Plaintiff-Appellee,

v. **Supreme Court No. 122286**

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellant.

Court of Appeals No. 232517
Ingham County Circuit Court No. 97-087437-NF

BRIEF OF DEFENDANT-APPELLANT, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

PROOF OF SERVICE

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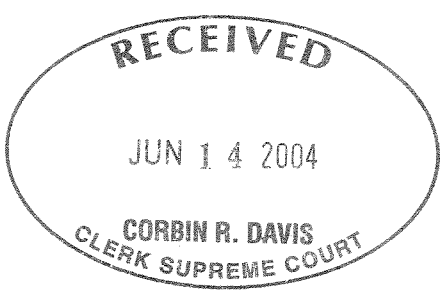

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TABLE OF CONTENTS

Page

INDEX OF AUTHORITIES

Cases **Page(s)**

INDEX OF AUTHORITIES (cont.)

Page(s)

INDEX OF AUTHORITIES (cont.)

Page(s)

Statutes and Court Rules

STATEMENT OF JURISDICTION

Defendant-Appellant, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, filed an application for leave to appeal, on September 9, 2002, from the Court of Appeals' opinion of August 16, 2002 (**47a**). By order of July 3, 2003, this Court denied the application for leave to appeal, after which Defendant timely filed a motion for reconsideration on July 24, 2003. By order of March 19, 2004, the Court granted the application for leave to appeal, thus vesting jurisdiction in the Court pursuant to MCR 7.302(F)(3).

STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

WHERE THERE IS NO CAUSAL CONNECTION BETWEEN A MOTOR VEHICLE ACCIDENT AND THE ACCIDENT VICTIM'S ONGOING NEED FOR ROOM AND BOARD, SHOULD THE COURT HOLD THAT THE EXPENSES PLAINTIFF INCURS PURCHASING FOOD ARE NOT "ALLOWABLE EXPENSES" UNDER §3107(1)(a) OF THE NO-FAULT ACT?

Plaintiff-Appellee would answer, "No."

Defendant-Appellant answers, "Yes."

The circuit court held that the cost of food under these circumstances is an "allowable expense."

The Court of Appeals affirmed, holding that it was bound by *Reed v Citizens Ins Co*, 198 Mich App 443; 499 NW2d 22 (1993), *lv den*, 444 Mich 964 (1994).

A. Should the Court overrule *Reed v Citizens Ins Co*, 198 Mich App 443; 499 NW2d 22 (1993), *lv den*, 444 Mich 964 (1994), where the accident victim's cost for room and board was held to be an "allowable expense" even absent a causal relationship between the accident and the need for such room and board?

Plaintiff-Appellee would answer, "No."

Defendant-Appellant answers, "Yes."

B. Should the lower courts have held *Reed v Citizens Ins Co* to be distinguishable from this case in any event, where Douglas W. Griffith, unlike the facts assumed to be true in *Reed*, owns the home in which he is residing, and thus is his own "provider" of room and board and would be the recipient of his own room and board payments?

Defendant-Appellant answers, "Yes."

INTRODUCTION -- SUMMARY OF ARGUMENT

The issue presented in this case calls upon the Court to closely examine the boundaries of no-fault insurance coverage. While it can hardly be debated that Michigan's no-fault scheme is generous, the statutory scope of its coverage is not without limits. One limit that is fundamental is that insurers are required only to "pay benefits for accidental bodily injury" arising out of automobile accidents. MCL 500.3105(1). This basic element, limiting payment of benefits to those that are for injuries suffered in an accident, imposes an obvious but essential causation requirement between the injury and the expense at issue.

It is this basic causation element that controls the precise issue presented in this case: whether the expense a person incurs for ordinary food consumption and to keep a roof over his head becomes an "allowable expense" under the No-Fault Act, chargeable to the automobile insurer, when the person is rendered disabled by an accident to the point of needing, at one time or another, inpatient treatment at a hospital or other medical care facility.

Defendant maintains that such an expense -- the ordinary life expense of "room and board" -- is not an expense incurred as the result of a motor vehicle accident, and so is not one that is "allowable" as a charge against the insurer. Plaintiff contends, and the trial court ruled, that Defendant is obligated to bear the cost of food consumed by Mr. Griffith for the rest of his life, in his own home, because "[he] can no longer provide for himself" (**40a** -- Tr 3/22/00, 11). Mr. Griffith's need for food, however, bears no causal relationship to the motor vehicle accident in which he was injured. The food expense being incurred by the Griffiths is not a loss *caused* by the motor vehicle accident; indeed, it is not a "loss" at all.

The trial court's award, Defendant submits, is in essence a wage replacement award, or a stipend akin to food stamps, that has no basis in the language of the No-Fault Act.

The question presented here was first addressed in *Manley v DAIIE*, 127 Mich App 444; 339 NW2d 205 (1983), which articulated the rule that "**accommodations [room and board] which are as necessary for an uninjured person as for an injured person are not 'allowable expenses'**". 127 Mich App at 454. Accordingly, the court held, unless the claimant's injuries require a "special diet," or institutionally-provided room and board is necessitated by the claimant's need for inpatient medical care, **food "is not ordinarily an 'allowable expense' for an injured person cared for at home.**" 127 Mich App at 454. Defendant contends that this resolution of the issue was entirely correct and should be adopted as the guiding rule of law.

On further appeal, however, this portion of the Court of Appeals' opinion in *Manley* was stripped of its "precedential force" on grounds that the issue had not been preserved in the lower courts. This Court expressly declined to address the issue. *Manley v DAIIE*, 425 Mich 140, 152-153; 388 NW 2d 216 (1986).

In a separate opinion, however, Justice Boyle did address the issue, and expressed the view that the "test" articulated by the Court of Appeals is "unwieldy and unworkable." Justice Boyle reasoned that since food is included as an "allowable expense" when the claimant is receiving institutionalized care, it should remain an "allowable expense" when the claimant is able to receive care at home. *Manley*, 425 Mich at 168-169 (Boyle, J., concurring in part, dissenting in part).

The Court of Appeals soon adopted Justice Boyle's analysis in a case involving a minor who, after receiving extensive inpatient treatment, returned to his parents' home where he was "provided ... with accommodations." *Reed v Citizens Ins Co*, 198 Mich App 443, 452; 499 NW2d 22 (1993), *lv den*, 444 Mich 964 (1994). *Reed* rejected the Court of Appeals' *Manley* test and instead adopted Justice Boyle's view, that the no-fault insurer is liable to pay the cost of the injured person's "maintenance" in the home. 198 Mich App at 453.

Defendant-Appellant, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, submits that *Reed* was wrongly decided, and that the Court of Appeals' analysis in *Manley*, in fact, is compelled by the text and purposes of the No-Fault Act. To conclude (as Justice Boyle did) that the ordinary expense of food at home should be an "allowable expense" on the basis that food institutionally-provided in the inpatient hospital setting is an "allowable expense," Defendant will show, is logic that is materially flawed. The connection that exists between a person's accident-related injuries and the person's provision of food, a room, and other basic necessities while hospitalized ceases to exist when the person is no longer hospitalized.

To require the no-fault insurer to bear the person's basic "maintenance" expenses after a disabling injury -- the same expenses that were borne by the person before the accident (e.g., food, shelter, toothpaste, toilet paper, clothing, etc.), on the basis that the person no longer can provide for him or herself, is to convert the medical benefits portion of the no-fault act, MCL 500.3107(1)(a), to a general welfare, income-replacement benefit.

Quite simply, the injuries suffered by Douglas Griffith did not cause his need for food, they caused his inability to earn a living and pay for his own food. The *Reed* rule must be abolished.

Defendant also contends that *Reed* is materially distinguishable in any event. Even if the young accident victim's receipt of ordinary room and board accommodations in *Reed* could properly have been deemed an "allowable expense" under the No-Fault Act, the same result would not obtain in the case at bar. A minor being provided "room and board" accommodations by others (albeit his parents) is potentially analogous to being provided such accommodations in an institutional setting, since both involve an expense "incurred" by the minor owing to the provider of the accommodations; whereas Mr. Griffith, an owner of the home in which he resides, essentially would owe "room and board" only to himself. The analysis applied in *Reed*, therefore, should not apply even were the Court ultimately to allow the "room and board" rule, in any form, to stand.

STATEMENT OF FACTS AND PROCEEDINGS

The underlying facts are similar to those in other catastrophic injury cases, and in this case are essentially undisputed and uncomplicated in terms of the legal issue presented.

On April 28, 1994, Douglas W. Griffith suffered a severe brain injury in a motor vehicle accident. For the next approximately fifteen months, Mr. Griffith received treatment and rehabilitation services as an in-patient at hospitals and other medical care facilities in Lansing and Grand Rapids, Michigan.[1] From August of 1995 through August of 1997, Mr. Griffith was placed in a residence in the Runaway Bay Apartments receiving nursing care and attendant care services on a 24 hour per day basis, until August 6, 1997, when, although still severely debilitated, he was able to return to his home. He continues to receive continuous care and assistance for his daily needs.[2]

At the time of his accident, Mr. Griffith was covered as an insured under a policy of no-fault automobile insurance issued by Defendant STATE FARM. Defendant never denied coverage for Mr. Griffith's injuries. Indeed, from the date of the accident onward Defendant has paid hundreds of thousands of dollars on behalf of itself and the Michigan Catastrophic Claims Association for Mr. Griffith's care, recovery and rehabilitation.[3] The first disagreement arose in connection with the move back home.

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[1] Plaintiff's Complaint and Defendant's Answer, ¶¶ 4, 8 (**5a-6a, 11a**); Plaintiff's Motion and Defendant's Response, ¶¶ 1, 2 (**17a, 24a**).

[2] Complaint, ¶9; Plaintiff's Motion and Defendant's Response, ¶¶ 2, 3 (**6a, 17a, 25a**).

[3] Plaintiff's Motion, Defendant's Response, ¶¶ 1, 8 (**17a-18a, 24a-25a**).

The medical "reasonableness" of Mr. Griffith's return home was far from settled at the time Plaintiff decided to make the move. And although Defendant ultimately paid in excess of $194,000 for the extensive modifications to the house owned by Plaintiff and Mr. Griffith (**32a**, **40a** -- Tr 3/22/00, 3, 11), at the time Plaintiff was having the home modifications constructed there was disagreement between Plaintiff and Defendant regarding the nature and necessity of the modifications being undertaken. Plaintiff filed suit against STATE FARM on November 26, 1997, seeking full reimbursement of the home modification expenses, but also alleging entitlement to numerous additional benefits not previously asserted. These, too, in large part, were promptly paid when detailed supportive documentation was submitted by Plaintiff.[4]

Through the course of pre-trial proceedings and cooperation between the parties and their counsel, most of the several issues in the case were amicably resolved by November 16, 1999, when Plaintiff filed her "Motions for (1) Legal Ruling on the Elements of Allowable Room and Board Expenses Under the No-Fault Act; and (2) MCL 500.3148 Attorney Fee Sanctions" (**16a**), which isolated the three remaining issues: entitlement to room and board benefits, entitlement to reimbursement of payments on a home equity loan, and no-fault attorney fees. By the time the motion was heard on March 22, 2000, the parties had resolved the attorney fee claim, as well. (*See*, **31a** -- Tr 3/22/00, 2; **45a-46** -- Order Dismissing Remaining Claims, 1/18/01).

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[4] Plaintiff's Motion and Defendant's Response, ¶¶ 9-13 (**18a-19a**, **25a-26a**).

Thus, only two issues remained for adjudication on the hearing date of March 22, 2000. Plaintiff claimed that a home equity loan taken out by the Griffiths shortly after the accident created an encumbrance on their title, which the Griffiths otherwise held "free and clear." Plaintiff contended that Mr. Griffith's move back into his home required Defendant to commence payment of a pro rata share of the home equity loan, irrespective of how the proceeds of the loan might have been spent (**32a-33a** -- Tr 3/22/00, 3-4).

The other issue (the only one raised in this appeal) concerned the expense of Mr. Griffith's "room and board" after his return home. It was first asserted in Plaintiff's Complaint at ¶12(b) (**6a-7a**):

> 12. As a result of said injuries, Douglas W. Griffith, a legally incapacitated person, has incurred certain allowable expenses ... which include, but are not limited to the following:
>
> * * *
>
> b. payment for the full cost of room and board for the care of Douglas W. Griffith from August 6, 1997 [his return home] to the present.

(Emphasis added). Thus, among the expenses Mr. Griffith claimed to be incurring "as a result of said injuries" was the cost of room and board in his own home.

The Ingham County Circuit Court, Judge Peter D. Houk presiding, ruled against Plaintiff on the home equity loan issue. On the claim for room and board ("food") reimbursement, the court ruled against Defendant (**40a**). It expressed its view that "under current case law, the Plaintiff is entitled to reimbursement for his food costs," reasoning that "Plaintiff can no longer provide for himself" (*id.*). An order memorializing the court's

rulings and reflecting the parties' agreed-upon rate for daily food expense was prepared and entered on July 11, 2000 (**42a-44a** -- Order Granting, In Part, and Denying, In Part, Plaintiff's Motion for Legal Ruling on the Elements of Allowable Room and Board Expenses Under the Michigan No-Fault Act, 7/11/00).

In accordance with the settlement of all their remaining areas of dispute, the parties finalized the trial court proceedings with the entry of their "Order Dismissing Remaining Claims" on January 18, 2001 (**45a-46a**).

Defendant appealed to challenge the trial court's ruling that the daily expense of food for Douglas Griffith constitutes an "allowable expense" under the No-Fault Act. In an unpublished opinion (**47a-49a**), and relying on what was held to be controlling precedent (**48a**), the Court of Appeals declined Defendant's invitation to express disagreement with the analysis in *Reed v Citizens Ins Co*, *supra* and assemble a conflict resolution panel. Instead, the court followed *Reed* and affirmed without commenting on the strengths or weaknesses of the analysis other than to note that it was based on Justice Boyle's opinion in *Manley v DAIIE*, 425 Mich 140, 169; 388 NW2d 216 (1986) (Boyle, J., concurring in part). The court also rejected Defendant's argument that *Reed*, even if accepted as a correct holding on its facts, was distinguishable from the instant case on the basis that Plaintiff Griffith, unlike the plaintiff in *Reed*, resides in his own home.

On September 9, 2002, Defendant filed with this Court its application for leave to appeal. By order of July 3, 2003, the Court denied the application. On reconsideration, however, leave to appeal was granted by order of March 19, 2004. The Court is now urged

to reject the analysis in *Reed*, to reverse the judgment of the Court of Appeals, and declare Defendant not liable to provide benefits for Plaintiff's "room and board" expenses.

ARGUMENT

A MOTOR VEHICLE ACCIDENT VICTIM'S ORDINARY EXPENSE FOR ROOM AND BOARD -- IN THIS CASE THE DAILY COST OF PLAINTIFF'S FOOD -- IS NOT COMPENSABLE AS AN "ALLOWABLE EXPENSE" UNDER §3107(1)(a) OF THE NO-FAULT ACT SINCE THERE IS NO CAUSAL CONNECTION BETWEEN THE MOTOR VEHICLE ACCIDENT AND THE VICTIM'S ONGOING NEED FOR FOOD.

Standard of Review

This case presents questions of law and issues of statutory interpretation, which are subject to de novo review. *Proudfoot v State Farm Mut Ins Co*, 469 Mich 476, 482; 673 NW2d 739 (2003); *In Re MCI Telecommunications Complaint*, 460 Mich 396, 413; 596 NW2d 164 (1999). Although the motion on which the trial court's ruling was rendered was not brought expressly under one of the summary disposition court rules, both the motion itself and the ensuing order labeled it as a "Motion for Legal Ruling on the Elements of Allowable Room and Board Expenses Under the Michigan No-Fault Act." As there were and are no disputed facts underlying the issue presented, review is de novo. *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 353; 596 NW2d 190 (1999).

A. **The Court should overrule *Reed v Citizens Ins Co*, 198 Mich App 443; 499 NW2d 22 (1993), *lv den*, 444 Mich 964 (1994), insofar as the accident victim's room and board was held to be an "allowable expense" even absent a causal relationship between the accident and the need for such room and board.**

The trial court ruled that Douglas W. Griffith's no-fault insurer, Defendant STATE FARM, must bear the cost of his ordinary daily food requirements, which he incurs while residing in his own home, on grounds that food is reasonably necessary for his sustenance, his injuries prevent him from being able to provide for himself, and it can be said that he would be receiving food as part of his institutional care were he receiving institutional care rather than residing in his own home. The issue presented, then, is whether "food" is an "allowable expense" within the meaning of §3107(1)(a) of the no-fault act, MCL 500.3107(1)(a), where the claimant's need for food is not causally related to the automobile accident in any way, but is the same as any uninjured person's need for food -- indeed, is the same as the claimant's own pre-accident need for food.

Defendant readily acknowledges that Mr. Griffith's needs, in general, are dramatically different than "any uninjured person." Uninjured persons do not need 24 hour per day attendant care services, do not need another person to prepare and serve their meals, and generally do not need wheelchairs, specially equipped beds or other such amenities that Mr. Griffith needs as a result of the injuries he suffered in the motor vehicle accident. These amenities and services, however, *do* qualify as "allowable expenses" as they are expenses

that are incurred *as a result of* the motor vehicle accident. There is no contention that Mr. Griffith's dietary needs are "special" as a result of his injuries.

In terms of the statutory language, the legal question presented is whether the cost of Mr. Griffith's food constitutes an "allowable expense" under §3107(1)(a) of the no-fault act, which provides as follows:

> . . . [P]ersonal protection insurance benefits are payable for the following:
>
> (a) Allowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation. . . .

MCL 500.3107(1)(a) (emphasis added). Statutory construction presents a question of law that is reviewed de novo. *In Re MCI Telecommunications Complaint*, 460 Mich at 413.

The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. *Proudfoot*, 469 Mich at 482; *Roberts v Mecosta General Hospital*, 466 Mich 57, 63; 642 NW2d 663 (2002) (giving effect to the intent of the Legislature is the "foremost rule of statutory construction"). If statutory language is clear and unambiguous, then it is assumed that the Legislature intended its plain meaning and the statute is applied as written. *Cruz v State Farm Mut Auto Ins Co*, 466 Mich 588, 594; 648 NW2d 591 (2002). A statute's language is given its ordinary and generally accepted meaning. *Proudfoot, supra*; *Putkamer v Transamerica Ins Corp*, 454 Mich 626, 631; 563 NW2d 683 (1997).

As several cases have pointed out, whether an automobile accident victim's expense will be deemed "allowable" under §3107(1)(a) turns on three conditions contained within the language of §3107(1)(a) -- (1) the charge must be reasonable, (2) the expense must have been reasonably necessary for the person's care, recovery or rehabilitation, and (3) the expense must have been incurred. *See*, *Owens v Auto Club Ins Assoc*, 444 Mich 314, 323-324; 506 NW2d 850 (1993); *Nasser v Auto Club Ins Assoc*, 435 Mich 33, 50; 457 NW2d 637 (1990); *Davis v Citizens Ins Co*, 195 Mich App 323, 326-327; 489 NW2d 214 (1993). Such were the precise elements cited and relied upon in the concurring opinion in *Manley v DAIIE*, 425 Mich at 169 (Boyle, J., concurring in part, dissenting in part).

Defendant submits that if these elements are read in isolation, however, without the causal relationship element that is presumed in the text of §3107(1)(a), there is no limit to what might theoretically constitute an "allowable expense." Rather, §3107(1)(a) must be read in conjunction with §3105(1), which provides the causation element:

> Under personal protection insurance an insurer is liable to pay benefits *for accidental bodily injury* arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, subject to the provisions of this chapter.

MCL 500.3105(1) (emphasis added). Direct application of this statutory language imparts that benefits are only provided "for accidental bodily injury," and that these benefits then are *further* limited by later sections of the act ("subject to the provisions of this chapter").

Accordingly, before §3107(1)(a) comes into play to limit the insurer's liability for benefits to those that are (1) reasonable, (2) reasonably necessary, and (3) actually incurred,

§3105(1) has *already* limited the scope of benefits to those that are "for accidental bodily injury arising out of the ... use of a motor vehicle[.]"

The requirement of a causal link between an incurred expense and the injuries sustained in the accident seemingly would be so fundamental as not to require argument. This Court has already expressly recognized that covered expenses are limited to those causally linked to accidents, in a discussion of the principal purposes of the no-fault act:

> Enactment of the Michigan No-Fault Insurance Act signaled a major departure from prior methods of obtaining reparations for injuries suffered in motor vehicle accidents. The legislature modified the prior tort base system of reparation by creating a comprehensive scheme of compensation designed to provide sure and speedy recovery of certain economic losses *resulting from* motor vehicle accidents.

Belcher v Aetna Casualty and Surety Co, 409 Mich 231, 240; 293 NW2d 594 (1980) (emphasis added). Indeed, even in this case, Plaintiff intuitively recognizes that any expense claimed to be compensable must be causally linked to the accident. Her Complaint only seeks recovery of those expenses that are incurred "as a result of" the injuries Mr. Griffith sustained:

> 12. As a result of said injuries, Douglas W. Griffith ... has incurred certain allowable expenses, consisting of reasonable charges ... which include, but are not limited to, the following:
>
> * * *
>
> b. payment for the full cost of room and board for the care of Douglas W. Griffith from August 6, 1997 to the present[.]

Complaint, ¶12 (**6a-7a**) (emphasis added).

While Plaintiff's Complaint thus purports to limit her claim to those expenses that are incurred as a result of the accident, the contention that Griffith's room and board costs are among such expenses is clearly false. Simply put, once Mr. Griffith returned home, no expenses for his food have been incurred "as a result of [his] injuries."

The rule announced by the Court of Appeals in *Manley v DAIIE*, 127 Mich App 444; 339 NW2d 205 (1983), *rev'd in part*, 425 Mich 140 (1986), precisely implemented this causation element, in holding that "accommodations which are as necessary for an uninjured person as for an injured person are not 'allowable expenses.'" *Id.*, at 454. Moreover, it recognized that food *can* be an "allowable expense," provided the causal link between the expense and the accident is established:

> In applying this rule, it is necessary to distinguish between injured persons for whom institutionalization in a hospital or nursing home is reasonably necessary and injured persons cared for at home. For example, food is as necessary for an uninjured person as for an injured person. Food, therefore, is not ordinarily an "allowable expense" for an injured person cared for at home, unless the nature of the injury makes a special diet reasonably necessary. However, ordinarily an institutionalized injured person must obtain food through the institution, and the cost of obtaining food through the institution presents an extraordinary expense not analogous to the cost of obtaining food at home. Therefore, for the institutionalized injured person, food obtained through the institution is ordinarily an "allowable expense".

Manley, 142 Mich App at 454 (emphasis added).

While this holding was stripped of its precedential force by this Court on grounds that the issue had not been preserved,[5] it nevertheless persuasively expresses the view that there must be a causal relationship between the injuries sustained in a motor vehicle accident and the expenses incurred by the claimant in order for those expenses to qualify as "allowable" under §3107(1)(a) of the no-fault act.

The contrary view, articulated in the concurring/dissenting opinion in *Manley*, 425 Mich at 161, 168-169 (Boyle, J.), and adopted by the Court of Appeals in *Reed v Citizens Ins Co*, 198 Mich App 443; 499 NW2d 22 (1993), *lv den*, 444 Mich 964 (1994), is based on reasoning that begins with a demonstrably flawed premise.

Persons catastrophically injured in a motor vehicle accident inevitably require extensive medical and rehabilitation services on an inpatient basis in a wide variety of hospital and nursing care settings. Expenses roughly falling within the description "room and board" accommodations as provided by these licensed medical care facilities, it is observed, is routinely and willingly covered by the no-fault insurer as "allowable expenses," along with the cost of medical, nursing and rehabilitation services themselves. This observation leads to the premise of the Boyle/*Reed* argument: where "room and board" for the institutionalized automobile accident victim is covered as an allowable expense, there is "no principled basis" to take this benefit away when the patient is fortunate enough to be

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[5] "[T]he question whether food, shelter, utilities, clothing, and other such maintenance expenses are an allowable expense when the injured person is cared for at home was not presented in the trial court or, indeed, argued in the Court of Appeals. We do not address that question. The opinion of the Court of Appeals on that question shall not be regarded as of precedential force or effect." *Manley v DAIIE*, 425 Mich at 152-153.

able to move back home. *Manley*, 425 Mich at 140 (Boyle, J.); *Reed*, 198 Mich App at 452-453; slip opinion below (**48a**).

The premise is flawed, however, because it fails to examine precisely why the food expense -- the patient's "room and board" -- is an allowable expense in the institutional setting. Contrary to the assertion, there *is* a "principled basis" for finding the expense "allowable" in one setting and not in the other.

"Room and board" expenses in the inpatient setting ordinarily are covered as charges incurred "for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation" because, in order to receive the inpatient care and treatment deemed necessary "for the injured person's care, recovery, or rehabilitation" in the first place, the patient necessarily must incur the facility's charges for being provided a room, hospital food, soap, and bedding, and must incur the charges for whatever other "overhead" is included in the institution's bills, such as electricity, laundry, building maintenance, toilet paper, and so on.

The institutionally-provided food served to a motor vehicle accident victim on an inpatient basis, in other words, is in essence a "special diet" necessitated by (i.e., causally related to) the injuries sustained in the accident. When the person no longer needs to be physically present in the institutional setting to receive treatment and becomes an outpatient, or it is deemed beneficial -- or indeed, cost efficient -- for the person to receive treatment at home, the relationship between the room and board expenses and the accident disappears. There is no statutory basis or justification for requiring the no-fault insurer (which is to say,

the motoring public) to pay for the person's groceries, or shelter, or soap, toothpaste, clothing, and so on.[6]

One of the cases Plaintiff has relied upon is *Sharp v Preferred Risk Ins*, 142 Mich App 499; 370 NW2d 619 (1985) (**34a** -- Tr 3/22/00, 5), which involved apartment rental expenses. This opinion, however, to the extent that it is analogous to the case at bar, directly supports the requirement of a causal link between the injuries sustained in an accident and the person's accommodation expenses for them to qualify as "allowable expenses." The dispute in *Sharp* was whether apartment rental payments for an automobile accident victim were covered. Holding that in this instance they were, the court applied the "injured person versus uninjured person" test, as announced in the *Manley* Court of Appeals opinion, and required that there be a difference: "As long as housing [that is] larger and better equipped is required for the injured person than would be required if he were not injured, the full cost is an 'allowable expense'." *Sharp*, 142 Mich App at 511.

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[6] The Court of Appeals recently held in *Hamilton v AAA of Michigan*, 248 Mich App 535; 639 NW2d 837 (2001), that television and telephone expenses charged during inpatient hospital treatment were *not* "allowable expenses" where there was no showing of a causal connection between those expenses and the injured person's "care, recovery, or rehabilitation." *Id.*, at 544. In support of its holding, the Court cited *Arlington Hosp v Heckler*, 731 F2d 171, 174 (CA 4, 1984), which reached the same conclusion with respect to Medicare's decision not to reimburse for in-patient television and telephone services. "The court noted that a bedside telephone was a personal comfort item that, despite its therapeutic benefit, was not directly related or essential to the delivery of [inpatient] health care services so as to justify reimbursement under Medicare." 248 Mich App at 548 (emphasis added), *citing*, *Arlington*, 731 F2d at 174. The principal applied by those courts applies to the food expense incurred by an accident victim during hospitalization: Since institutional food services *are* directly related or essential to the delivery of inpatient health care, it is reasonable that such "food" expense would be covered as an allowable expense. This justification ends, however, when the patient ceases to receive inpatient or institutionalized health care.

The Court of Appeals' decision in *Davis v Citizens Ins Co* 195 Mich App 323; 489 NW2d 214 (1992), even though post-*Manley* and post-*Reed*, likewise supports the use of an "injured person versus uninjured person" test. The holding in *Davis* was that the cost of a modified van for a paraplegic accident victim qualified as an allowable expense. Noting first that transportation ordinarily "is as necessary for an uninjured person as for an injured person," the court relied on the fact that in this case the van was necessary in order for injury-related medical care to be provided [just as the provision of institutional food service is necessary in order for inpatient medical care to be provided!] to find the cost of the van to be covered.

This Court, too, has utilized essentially the same "injured person versus uninjured person" necessity test to consider whether benefits are owed in the analogous setting of workers' compensation.[7] In *Kushay v Sexton Dairy*, 394 Mich 69; 228 NW2d 205 (1975), the issue was compensation for services that were performed by a wife for the benefit of her injured husband. The Court ruled that only those services that differed, as a result of the injuries, from those she would have done in any event, were compensable:

> House cleaning, preparation of meals and washing and mending of clothes, services required for the maintenance of persons who are not disabled, are beyond the scope of the obligation imposed on the employer. Serving meals in bed and bathing, dressing, and escorting a disabled person are not ordinary household tasks.

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[7] *See, Swantek v Auto Club Ins Assoc*, 118 Mich App 807, 810; 325 NW2d 588 (1982) (since workers' compensation and automobile insurance both are remedial no-fault systems, "[i]t is reasonable to interpret similar provisions in the statutes governing these systems in the same light"); *accord, Visconti v DAIIE*, 90 Mich App 477; 282 NW2d 360 (1979).

Kuchay, 394 Mich at 74 (emphasis added). The Court in *Kushay* thus adopted a "services required for the maintenance of persons who are not disabled" criteria. It supports the proposition in the no-fault setting that, before a "reasonably necessary product[] ... [i.e., food, shelter, etc.] for an injured person's care" will be deemed an "allowable expense," it must bear some relationship to the person's injuries that differentiates it from an uninjured person's need for food.

In order to contend that there is no such causal link requirement, Plaintiff must advance an argument that construes the "allowable expense" terms of §3107(1)(a) in isolation, without the precondition of a relationship with the motor vehicle accident required by §3105(1). Under such an approach, where "food" obviously is a "reasonably necessary product" for *any* person's care, it is axiomatic that it would be required for a person injured in a motor vehicle accident, as well. Thus, Justice Boyle's opinion in *Manley* quotes and discusses only §3107(1)(a), and asserts only the three elements thereunder,[8] rejecting as "unwieldy and unworkable" the test that any expense equally necessary to an uninjured person is not an "allowable expense." 425 Mich at 168-169. This, of course, became the prevailing rule of law when it was adopted by the Court of Appeals' panel in *Reed, supra*. 198 Mich App at 453.

There are three very significant problems, however, with the Boyle/*Reed* approach, as will be shown. First is the fact that Justice Boyle's premise simply is mistaken; second

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[8] "The statute requires that three factors be met before an item is an 'allowable expense': 1) the charge must be reasonable, 2) the expense must be reasonably necessary, and 3) the expense must be incurred." *Manley*, 425 Mich at 169 (Boyle, J., concurring in part, dissenting in part).

is the fact that, in ignoring the precondition of causation superimposed by §3105(1), it violates the rule of construction that requires courts to construe a statute as a whole to harmonize its provisions and thereby carry out the purpose of the legislature. *Macomb County Prosecutor v Murphy*, 464 Mich 149, 158-160; 627 NW2d 247 (2001); *Gebhart v O'Rourke*, 444 Mich 535, 542; 510 NW2d 900 (1994); and third is the virtually unlimited, and unprincipled, scope of expenses that would qualify as "allowable" were it not for §3105(1)'s causation element imposed upon §3107(1)(a).

First, the basic premise of the *Reed* rule, as articulated in Justice Boyle's *Manley* opinion, is unfounded, as the main objection to the Court of Appeals' *Manley* test as being "unwieldy and unworkable" and unprincipled is specious. Justice Boyle's explanation for this charge is as follows:

> The "test" adopted by the Court of Appeals -- that any expense equally necessary to an uninsured person is not an "allowable expense" -- is unwieldy and unworkable. The cost of institutional care for John Manley included, for example, food, an item as necessary to uninjured persons as to John. I find no principled basis for deciding that food provided to John at home is not as much an "allowable expense" as the food provided in a licensed medical care facility.

Manley, 425 Mich at 168 (Boyle, J.) (emphasis added). The first proposition in this passage, that the food John Manley received as an inpatient is as necessary for uninjured persons as to John, is not accurate: Uninjured persons do not require inpatient medical care, and thus do not require institutionalized food service. Stated differently, and more to the point, the "charges incurred" by John Manley for the food he received as an inpatient were inherently

linked to his need for medical treatment, and thus materially differ from an uninjured person's food bills.

Thus, while Justice Boyle could "find no principled basis" for deciding that food served at home is not as much an "allowable expense" as food served institutionally, the basis is this: food served in a licenced medical care facility is necessitated by the injuries suffered in a motor vehicle accident, while food served at home (other than when the nature of an injury makes a "special diet" necessary) is not.

A second and more direct problem with the Boyle/*Reed* approach is that it ignores the causation element imposed by §3105(1) as a precondition on all benefits that they be "for accidental bodily injury arising out of the ... use of a motor vehicle..." Where the expense incurred for Douglas Griffith's consumption of food is entirely unrelated to the fact that he had an automobile accident, the benefits paid as reimbursement, in effect, are welfare benefits, not "benefits for accidental bodily injury...." §3105(1). This, too, is detailed below.

The third and perhaps most important problem with the Boyle/*Reed* rejection of the "injured person versus uninjured person" necessity test is that, without the requirement of a causal link between the injured person's need for food and the treatment of his injuries, §3107(1)(a) is stretched far beyond its intended scope. Again, since room and board -- food and shelter -- is "reasonably necessary" for any and everyone's care, it is a foregone conclusion that it would be regarded as a reasonably necessary "product," "service" or "accommodation" for any accident victim's "care." If this is the sole test for determining

whether an incurred charge will qualify as an "allowable expense," however, then it is no less true that other expenses such as medical or dental care *having no relationship whatsoever with the accident-injuries* are also reasonably necessary "products," "services" or "accommodations" for the accident victim's "care." Nor would there be any reason not to include the person's reasonable need for toothpaste, or soap, or clothing, or any other of the basic, essential requirements of life that typically are provided in an institutional setting but otherwise apply to injured and uninjured persons alike.

Must the no-fault insurer cover all of Douglas Griffith's medical treatment, without regard to whether the condition treated is related to the accident? Under the Boyle approach, the answer can only be "yes" if (1) the charge is reasonable, (2) the treatment is reasonably necessary, and (3) the expense is actually incurred. *Manley*, 425 Mich at 169 (opinion of Boyle, J.). Yet the answer to this question is "no," because medical care that is not "for accidental bodily injury arising out of the ... use of a motor vehicle" (§3105(1)) is not within the scope of no-fault coverage. There is no "principled basis" for regarding the accident victim's room and board expenses any differently.

The construction of §3107(1)(a) adopted in *Reed* (and applied below) thus would require no-fault insurers to bear expenses having no connection to a motor vehicle accident. This is contrary to the legislative intent of the statute: "The goal of the no-fault act is 'to provide victims of motor vehicle accidents assured, adequate and prompt reparations for certain economic losses.' [] Reparations for actual damages is provided; windfalls are not."

Davis v Citizens Ins Co, 195 Mich App at 332 (Griffin, J., concurring) (quoting, *Shavers v Attorney General*, 402 Mich 554, 579; 267 NW2d 72 (1978).

As previously observed, Michigan's no-fault scheme for injury reparations is undeniably the most comprehensive and generous in the country, providing essentially unlimited and unending coverage of medical and related expenses, and providing for certain economic losses, as well. *Nelson v Transamerica Ins Services*, 441 Mich 508, 514; 495 NW2d 370 (1992); *Belcher v Aetna Casualty*, 409 Mich at 245. To keep this generous system viable, any limits that do exist within the act should be carefully honored. *Gregory v Transamerica Ins Co*, 425 Mich 625, 631-632; 391 NW2d 312 (1986); *O'Donnell v State Farm Ins Co*, 404 Mich 524, 547-549; 273 NW2d 829 (1979) (because of the compulsory nature of no-fault insurance coverage, public policy demands that premiums be kept as low as possible).

This cost-conscious side of the legislative plan was emphasized in *Kitchen v State Farm Ins Co*, 202 Mich App 55; 507 NW2d 781 (1993), *lv den*, 447 Mich 962 (1994):

> We agree with defendant that as long as it satisfies its statutory obligation to pay for all reasonable charges incurred for those products, services, and accommodations reasonably necessary to meet Elisha's needs, defendant should be able to choose the least expensive adequate means of providing those items. This is completely consistent with the goal of the no-fault insurance system, which is to provide victims of motor vehicle accidents assured, adequate, and prompt reparation for certain economic losses at the lowest cost to both the individual and the no-fault insurance system. *See, Nelson v Transamerica Ins Services*, 441 Mich 508, 514; 495 NW2d 370 (1992).

Kitchen, 202 Mich App at 58 (emphasis added).

In order to argue that the *Reed* "room and board" rule is a narrow one, Plaintiff will insist that reimbursement for room and board accommodations as an "allowable expense" is strictly limited to claimants who are catastrophically injured. The rationale seems to be that seriously injured accident victims who necessarily spend time as an inpatient in a hospital or other extended care facility will have had meals provided by that care facility and thus covered by the no-fault insurer and, the argument proceeds, there is no reason for the no-fault insurer to discontinue this benefit when the patient moves home. *See*, *Manley*, 425 Mich at 169 (Boyle, J.); *Reed*, 198 Mich App at 453. No such meaningful or statute-based limit, however, exists.

On what "principled basis" can such a line be drawn short of another disabled accident victim who, while not so catastrophically injured as to be a candidate for long-term institutionalization, nevertheless has received some inpatient care at a hospital (and thus received covered "room and board" expenses to this extent) and now has returned home -- not in need of home modifications or attendant care, but just as unable to earn an income to purchase his own groceries (and toothpaste, and clothing) as the catastrophically injured patient? Plaintiff can point to no statutory language that would support a rule making "room and board" accommodations a covered expense for one while making such benefits unavailable to the other.

Under the logic of the Boyle/*Reed* "room and board" rule, quite simply, any time an accident victim spends time in a hospital and is served food, the no-fault insurer would become responsible for providing food to the insured for the duration of the disability --

even though the accident had nothing whatsoever to do with the insured's need for food or the type of food that can be consumed. In this appeal, Plaintiff will be called upon to articulate precisely the elements of this entitlement and provide principled, statute-based reasons for each element. She will be unable to do so.

Ultimately, what motivates the inclination to hold the expenses of a catastrophically injured accident victim's room and board and other basic accommodations to be "allowable expenses" is the very factor cited by the circuit court in this case: "Defendant has missed the point. Plaintiff can no longer provide for himself[.]" (**40a** --Tr 3/22/00, 11).

It is important to recall that "work loss" benefits are, in fact, available under the act. MCL 500.3107(1)(b). These benefits, however, only extend for a maximum of three years after the accident. Where circumstances support a tort recovery against a negligent driver, additional compensation for the accident victim's loss of income would potentially be available under MCL 500.3135(3)(c). Otherwise, the no-fault act provides no further coverage for a victim's lost earnings.

Nowhere in the no-fault act is there a provision for subsistence income for injured persons living at home, i.e., room and board and the like. There is no legislative history that suggests that the no-fault scheme was intended to provide a guaranteed minimum subsistence income for life for traffic accident victims, or to provide them with the basic necessities of life, necessities which are needed by all persons, such as ordinary food and housing. To the contrary, as this Court stated in *Belcher v Aetna Casualty, supra*:

> [T]he act is <u>not</u> designed to provide compensation for all economic losses suffered as a result of an automobile accident

> injury. Under personal protection insurance, the act recognizes certain losses suffered by the injured person and seeks, to a limited extent, to compensate for them.

409 Mich at 245 (emphasis added).

Fundamentally, Douglas Griffith's injuries did not cause his need for food, they caused his inability to earn a living and pay for his own food. The benefits ordered by the trial court as "allowable expenses" to cover the cost of his food, therefore, would more appropriately be provided as wage replacement benefits under **§3107(1)(b)**, except that the three-year limitation on such benefits expired long ago. Providing these benefits as compensation for "allowable expenses" on the theory that food and shelter represent "necessary products, services and accommodations for [Griffith's] care, recovery and rehabilitation" is nothing more than a transparent shift of his work loss benefits from **§3107(1)(b)** over to **§3107(1)(a)**.

This Court should reject the analysis employed by the Court of Appeals below and in *Reed v Citizens Ins Co*, *supra*, and by the concurring and dissenting opinion in *Manley v DAIIE*, *supra*. The "room and board" rule is contrary to the express language and intent of the statute. The Court should so hold, reverse the judgment in favor of Plaintiff, and order that summary disposition on Plaintiff's "room and board" claim be granted in favor of Defendant.

B. The holding in *Reed v Citizens Ins Co*, 198 Mich App 443; 499 NW2d 22 (1993), *lv den*, 444 Mich 964 (1994), is distinguishable from this case in any event, where Douglas W. Griffith, unlike the facts assumed to be true in *Reed*, owns the home in which he is residing and thus would be the recipient of his own room and board payments.

The question of whether costs incurred for providing room and board to a catastrophically injured accident victim outside the hospital or institutional setting, as addressed in *Reed v Citizens Ins Co*, *supra*, is the principal issue in this appeal. For the reasons stated, Defendant takes issue with both the reasoning and the result reached in that case. Yet even if the Court were to uphold the rationale on which the holding in *Reed* is based, reversal nevertheless is required because the *Reed* rationale does not apply with the same force here.

The facts underlying the court's decision in *Reed* are materially distinguishable from those in this case. Both cases involve catastrophically injured persons who require full time attendant care services and would qualify for institutionalized care were it not for family members willing to share the home and for the no-fault insurer's provision of extensive home modifications. The distinction, rendered material by the analysis employed by the Court of Appeals' panel in *Reed*, is that the young claimant in *Reed* was a minor who was being provided room and board accommodations by another person (his mother), while the claimant in this case, Douglas Griffith, was and is an adult residing in his own home.

Although the opinion in *Reed* notes the existence of a factual dispute as to whether the home was owned outright by the young accident victim's mother or whether she owned

the home in trust for him (198 Mich App at 445, n. 1), the ruling of the court proceeds on the assumption that the home belonged to the mother: "[W]e are not, because of the present posture of this case[9], in a position to decide whether ownership of the home is relevant. Rather, we will consider the allegations in plaintiff's proposed second amended complaint to be true, i.e., that plaintiff [the mother] has provided Steven with accommodations." *Reed*, 198 Mich App at 452 (emphasis added).

That the home in *Reed* belonged to the accident victim's mother (or was assumed to belong to her) was material to the court's reasoning. The court first observed that when *services* are provided for the benefit of an accident victim, e.g., attendant care services, they are just as compensable when provided by family members as when provided by unrelated persons hired as nurse's aides. 198 Mich App at 451-452 (*citing, Van Marter v American Fidelity Fire Ins Co*, 114 Mich App 171, 178-181; 318 NW2d 679 (1982)). It then applied this rationale to the provision of room and board, reasoning that if the provision of "room and board" by a hospital or other institution would be compensable as an "allowable expense," "[w]e see no compelling reason not to afford the same compensation under the act to family members who provide room and board. Subsection (1)(a) does not distinguish between accommodations provided by family members and accommodations provided by institutions[.]" *Reed*, 198 Mich App at 452.

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9 *Reed* came before the Court of Appeals on an appeal from the trial court's denial of a motion to amend the complaint. The ruling of the Court of Appeals, therefore, was simply that the trial court should have allowed the count adding a claim for reimbursement of room and board expenses under §3107(1)(a).

The key factor in the court's analysis in *Reed*, then, was that the young claimant would be incurring "room and board" expenses in any event, whether as an inpatient in a medical care facility or by his mother's willingness to provide him with the accommodations of "room and board" in her home.

Douglas Griffith's situation is materially different. While receiving medical and related services and treatment as an inpatient, Mr. Griffith necessarily incurred expenses that can be regarded as the cost of "room and board"charged to him by the institutions. Once he moved home in August of 1997, however, Mr. Griffith was no longer being provided "room and board" by another person or institution, because he was and is an *owner* of his own home. As such, Mr. Griffith incurs no extraordinary expenses for room and board because, unlike the situation in *Reed*, he is providing these accommodations to himself. The analysis applied in *Reed*, even assuming it were otherwise valid, should have been held not to apply to the case at bar.

The Court of Appeals rejected this distinction between *Reed* and the case at bar and held *Reed* to be controlling in favor of Plaintiff (**49a** -- slip op., p. 3). It said,

> Defendant's efforts to distinguish *Reed* are unavailing where the *Reed* Court held that if an injured insured would otherwise require institutionalized care were a family member not willing to provide home care, room and board in the home constitutes an allowable expense under MCL 500.3107(1)(a). *Reed, supra.*

(*id.*). In light of the factual distinctions, Defendant maintains that the *Reed* holding does not support an affirmance here.

Quite simply, where the plaintiff-mother in *Reed* owned the home and provided her son with "room and board," and so it can be said that the minor claimant did "incur" expenses, the same cannot be said of Mr. Griffith because the home in which he resides and the food he would purchase (or have purchased on his behalf) are his own; any "charges" that could be assessed for these provisions could only be charged by him against himself. Since Griffith cannot charge himself for room and board, no expenses are "incurred."

And for the same reason, it simply is not accurate to say that Mr. Griffith would otherwise require institutionalized care were a family member not willing to provide home care. All along Mr. Griffith's care has been provided, at least in substantial part, by professional nurse's aides. Whether his attendant care would be provided in part by family members or exclusively by employees of a home care agency, Mr. Griffith could continue to reside in his own home (as modified at the insurer's expense). It cannot be said, therefore, that he would be institutionalized "were a family member not willing to provide home care" (**49a** -- slip op., at 3).

Yet this distinction only reveals the specious nature of the basic "room and board" rule. A person's basic need for food and shelter clearly has no connection to their involvement in a motor vehicle accident. The expenses incurred in meeting those basic needs, therefore, cannot be an "allowable expense" within the meaning of §3107(1)(a) of the act. While the provision of food, shelter, a bed, and other such essentials is directly and necessarily linked to the accident-injuries <u>when those injuries are being treated in a hospital</u>

or other inpatient care facility, there is no such link when the patient is residing at home -- that is to say, outside the hospital or other inpatient care facility.

Accordingly, this Court should reject the basic premises of the "room and board" rule as articulated in Justice Boyle's concurring/dissenting opinion in *Manley*, adopted by the Court of Appeals in *Reed*, and followed by the lower courts in this matter. The Court of Appeals' opinion in *Manley*, 127 Mich App at 454, sets forth the better rule.

RELIEF REQUESTED

For all the foregoing reasons, Defendant-Appellant, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, respectfully requests this Honorable Court to reverse the decision of the Court of Appeals and order the case remanded to the circuit court for entry of Judgment in Defendant's favor on Plaintiff's claim for reimbursement for food as an "allowable expense."

Respectfully submitted,

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June 14, 2004

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STATE OF MICHIGAN

IN THE SUPREME COURT

PHYLLIS L. GRIFFITH, Le gal Guardian for Douglas W. Griffith, a legally incapacitated adult,

Plaintiff-Appellee,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellant.
_____/

Supreme Court No. 122286

Court of Appeals No. 232517

Ingham County Circuit Court
No. 97-87437-NF

PROOF OF SERVICE

STATE OF MICHIGAN)
)ss
COUNTY OF WAYNE)

DANIEL S. SAYLOR, deposes and says that he is associated with the law firm of GARAN LUCOW MILLER, P.C., attorneys for Defendant-Appellant; and that on June 14, 2004, he caused two copies of the BRIEF ON BEHALF OF DEFENDANT-APPELLANT, the APPELLANT'S APPENDIX and this PROOF OF SERVICE to be served upon all counsel by enclosing same in well-sealed envelopes addressed to: GEORGE T. SINAS, ESQ./L. PAGE GRAVES, ESQ., Attorneys for Plaintiff-Appellee, 3380 Pine Tree Road, Lansing, Michigan 48911-4207; and STEVEN G. SILVERMAN, ESQ., Attorney for Amicus Curiae ACIA, 615 Griswold, Ste. 1305, Detroit, Michigan 48226, with full legal postage pre-paid thereon and deposited in the United States mail.

DANIEL S. SAYLOR

Subscribed and sworn to before me
this 14th day of June, 2004.

LINDSAY C. DUGAN
Notary Public, Wayne County, Michigan
My Commission Expires: 11/26/07

Document: 525568.1